

HON' BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.197, 198, 204, 205, 206, 207, 270, 289 & 327
of 2018

COMMON JUDGMENT: (per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

These Appeals are preferred against the interlocutory orders passed by the learned Single Judge modifying the interim orders passed earlier. In the order under appeal the notification issued by the appellants, under Section 22(A) of the Registration Act, on 23.12.2015 was, *prima-facie*, held to be unsustainable since alienation of the property mentioned therein was not prohibited under any statute, of the State or Central Government, as required under Section 22(A)(1)(a); the appellants had contested the title of the respondents-writ petitioners, and had suffered adverse decision from the judgment in WP Nos.21487 and 21483 of 2000 dated 11.09.2009, which came to be confirmed in Special Leave to Appeal (Civil) CC No.19646-19647 of 2011 dated 05.01.2012; and the Review Petition and Curative Petitions, filed in the Supreme Court, had also been dismissed. The learned Single Judge further observed that the very issuance of the notification was in contempt of the above orders passed by the Division Bench of this Court and the Supreme Court of India, since the appellants-respondents had purported to act in appeal over the said decision. The Learned Judge granted interim directions as prayed for.

The interim direction sought for, in the WPMPs, was to direct the Joint Sub-Registrar to receive, register and release the

document submitted by the respondents-writ petitioners. The main relief sought for in these writ petitions was to declare the proceedings dated 23.12.2015 issued by the State of Andhra Pradesh and the District Collector, Visakhapatnam as published in the Visakhapatnam District Gazette, notifying various extents of land in different survey numbers as being Government lands, and including them in the list of prohibited properties under Section 22(A)(1)(a) of the Registration Act, as illegal, arbitrary and in violation of the provisions of the Registration Act, as also the judgment in WP Nos.21487 and 21493 of 2000 dated 11.09.2009 in so far as they related to the land of the petitioner. A consequential direction was sought to set aside the proceedings issued by the State of Andhra Pradesh and the District Collector, Visakhapatnam dated 23.12.2015, published in the Visakhapatnam District Gazette notifying different extents of land in the subject survey numbers as being Government lands and inclusion in the list of prohibited properties under Section 22-A(1) of the Registration Act in so far as it related to the land of the petitioner. The respondents-writ petitioners had also sought a direction to declare the action of the Joint Sub-Registrar and the District Registrar, in failing to receive, register and release the document submitted by the petitioner as illegal and arbitrary, and to consequently direct the Joint Sub-Registrar to receive, register and release the documents.

As noted hereinabove, the interim relief sought for, in the Writ Petitions, was only to direct the Joint Sub-Registrar to

receive, register and release the documents submitted by the respondent-writ petitioners without reference to the Gazette notification dated 23.12.2015.

Learned Advocate General for the State of Andhra Pradesh would submit that the interim order under appeal has the effect of allowing the main Writ Petition itself; the respondents-writ petitioners, in these batch of cases, did not even seek suspension of the Gazette notification dated 23.12.2015 whereby the subject lands were included in the prohibitory order list; this Court would not, ordinarily, pass an interim order at the stage of admission, even before the appellants could file their counter-affidavit in the Writ Petition which, in effect, would result in the grant of the main relief, that too one which could only have been granted on the Gazette notification dated 23.12.2015 being set aside.

On the other hand Sri D. V. Stharam Murthy, learned Senior Counsel appearing on behalf of the respondents-writ petitioners, would submit that the learned Single Judge was justified in passing the interim order under appeal; the respondents-writ petitioners cannot be forced to invoke the jurisdiction of this Court a second time, and suffer the ordeal of a protracted litigation even though the earlier round of litigation had ended with the dismissal of the Curative Petition filed by the appellants; it was wholly unnecessary for the respondents-writ petitioners to seek suspension of the Gazette notification dated 23.12.2015, as it was suspended in WPMP No.10562 of 2016 in WP No.8331 of 2016 dated 15.03.2016;

and Section 22-A(1)(a) is not attracted as it is not even the case of the appellants herein that the subject lands are prohibited from alienation by any Central or State enactments.

As has been noted herein above the interim relief, which the learned Single Judge has granted, is in effect the main relief which could have been granted only if, and after, the Writ Petitions were finally allowed. Such an interim order would, ordinarily, not be passed at the stage of admission of the Writ Petition, that too without affording the appellants-respondents an opportunity to file their counter-affidavits. These Writ Petitions were filed in November 2017 questioning the Gazette notification dated 23.12.2015 issued nearly two years prior thereto. It is not as if there was an extreme urgency to pass an interim order, or that the matter could not await the appellants filing their counter-affidavit in the Writ Petition, and thereafter for the rival contentions, urged on behalf of the parties to the lis to be considered. The appellants herein were not afforded a reasonable opportunity of contesting the matter, and to put forth their contentions in support of the Gazette notification dated 23.12.2015 issued under Section 22-A(1)(a) of the Registration Act.

While we see no reason to disagree with the submission of Sri D.V. Stharama Murthy, learned Senior Counsel appearing on behalf of the respondents-writ petitioners, that, under Section 22-A(1)(a), it is only the documents, relating to transfer of immoveable property, which is prohibited from alienation/transfer under any

statute of the State Government or Central Government, which can be prohibited from registration, these are all matters which can be properly examined only after the appellants herein have filed their counter-affidavit in the Writ Petitions.

It is no doubt true that in WP No.8331 of 2016, filed by Smt. Pani Kamala devi, interim directions as prayed for was granted in WP MP No.10562 of 2016 in WP No.8331 of 2016 dated 15.03.2016, which is to suspend the operation of the proceedings issued by the State of Andhra Pradesh and the District Collector, Visakhapatnam dated 23.12.2015, published in Visakhapatnam District Gazette notifying various extents of land in different survey numbers as Government lands, and including them in the list of properties prohibited from registration under Section 22-A(1) of the Registration Act. The aforesaid interim order would enure only to the benefit of the petitioner in WP No.8331 of 2016 i.e., Smt. Pani Kamaladevi, and not to the respondents-writ petitioners herein none of whom were not parties to W.P. No.8331 of 2016. It is only if, and after, the notification issued under Section 22-A(1)(a) on 23.12.2015 is set aside in its entirety, can it thereafter be contended that, since all these lands are no longer included in the prohibitory order book, the Sub-Registrar is obligated to receive, register and release the documents, relating to its alienation/transfer, in accordance with law. An interim order, passed in a pending Writ Petition filed by Smt. Pani Kamala devi, cannot be made applicable even in cases where the subject lands were purchased by different persons either from Smt. Pani

Kamaladevi, or from the others who purchased these lands from her, prior to the Gazette Notification dated 23.12.2015.

As all the respondents-writ petitioners have, admittedly, purchased these lands prior to 23.12.2015, when the Gazette Notification was issued, it is they who claim to be the owners of the subject lands, and not Smt. Rani Kamala devi. The interim order passed in the Writ Petition filed by Smt. Rani Kamala devi, suspending the Gazette notification dated 23.12.2015, cannot be relied upon by others who, in the Writ Petitions filed by them, have neither sought suspension of the said notification, nor has the aforementioned notification been suspended in so far as they are concerned. The very fact that the interim relief sought for by them in the W.P.M.P, the order passed which is now under appeal before us, is that the documents presented by them should be registered and released without reference to Gazette notification dated 23.12.2015, also goes to show that they did not understand the interim order, passed in WP MP No.10562 of 2016 in WP No.8331 of 2016 dated 15.03.2016, as being automatically applicable to them. In any event the order under appeal is not based on this ground, and it would be wholly inappropriate for us to examine this contention for the first time, in proceedings under Clause 15 of the Letters patent, even before the appellants-respondents file their counter-affidavits in the Writ Petitions.

While it is no doubt true that, in exceptional circumstances, an interim order, which has the effect of granting the main relief

sought for in the Writ Petition, can also be passed, we are satisfied that, in the present batch of cases, wherein the Gazette notification dated 23.12.2015 was subjected to challenge nearly two years thereafter in November, 2017, grant of such an interim relief is unjustified. The orders under Appeal are, therefore, set aside, and all the WP MPs in these Writ Petitions, are restored to file. The appellants shall file their counter-affidavits, in the aforesaid Writ Petitions, within three weeks from today. It is open to Sri N. Aswini Kumar, learned counsel for the respondents-writ petitioners, to request the learned Single Judge to take up the WP MPs for hearing any day after three weeks from today.

All the Writ Appeals are disposed of accordingly. No order as to costs. Pending miscellaneous petitions, if any, in these Writ Appeals shall stand closed.



RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

Date: 05.03.2018
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